

REMARKS

Claims 1, 2, 7-13, 16-20 are pending. Claims 3-4, 6, 14-15 have been canceled. No claims have been withdrawn.

Support for the “porous coatings” limitations to claim 1 is found in the as-filed specification at page 7, line 25 and page 8, line 15.

Claims 1,2,6-8,10,12-13,17 and 20 stand rejected under 35 USC 102 as being anticipated by US Patent Publication No. 2003/0220691 (“Songer”)

In formulating this rejection, the Examiner relied upon the device 175' in FIGS. 11E-H and paragraph [0062] of Songer.

In presenting the embodiment of device 175 of FIG. 11A-D, Songer teaches that its endplates are not fixed to the respective vertebrae:

[0060] Accordingly, the surfaces 182 and 184 include radially extending bearing surface portions 182a and 184a that extend radially along the respective facing vertebral surfaces and central, axially extending bearings surface portions 182b and 184b that serve to locate the device 175 while also allowing relative sliding rotation of the vertebrae 20 and 22 thereabout and specifically 3600 about device axis 186 since the plate members 176 and 178 are not fixed to the respective vertebrae 20 and 22.

Songer also teaches that the embodiment of device 175 of FIG. 11A-d is substantially similar to that of device 175' of FIGS. 11E-H:

[0062] FIGS. 11E-11H are views of another device 175' similarly constructed to device 175 including upper and lower plates 176 and 178 with a ball bearing 180 therebetween.

Therefore, it is reasonable to conclude that, as with device 175, the plate members 176 and 178 in device 175' are not fixed to the respective vertebrae 20 and 22. In contrast, the present invention requires porous coatings on its endplates for the purpose of

promoting bony ingrowth therethrough so as to provide endplates that become fixed to their respective vertebrae.

Since Songer does not teach the provision of porous coatings upon its endplates (and in fact teach away from the use of porous coatings by stating that the plate members 176 and 178 are not fixed to the respective vertebrae 20 and 22), the present invention is patentable over Songer. Therefore, the present rejection should be withdrawn.

Claims 9, 11 and 16 stand rejected as being unpatentable over Songer

Since these claims depend from claim 1, and the “porous coatings” limitation is not disclosed, taught or suggested by Songer, this rejection should be withdrawn.

Claims 18 and 19 stand rejected as being unpatentable over Songer in view of US Patent No. 6,749,635 (“Bryan”)

Since these claims depend from claim 1, the “porous coatings” limitation is not disclosed, taught or suggested by Songer, and Songer teaches away from such a modification, this rejection should be withdrawn.

In addition, please provide any additional extensions of time which may be necessary and charge any fees which may be due to Deposit Account No. 10-0750, but do not include any payment of issue fees.

Should there be any remaining or further questions, the Examiner is requested to place contact the undersigned directly.

Respectfully submitted,

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